Supreme Court
FILED
MAR 2 1987
JOSEPH F. SPANIOL, JR.
CLERK

NO. 86-1198

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

LOR, INC.,
NEWPARK PIPE & SUPPLY, INC.,
NEWPARK WASTE TREATMENT SYSTEMS, INC.,
NEWPARK FLUID SERVICES, INC., AND
GUILLORY TANK TRUCK SERVICES, INC.

VERSES

CHEVRON U.S.A. INC.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF LOUISIANA

REPLY OF CHEVRON U.S.A. INC. TO MOTION TO DISMISS FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION FILED BY APPELLEES

Of Counsel:

D.A. MOLONY
PATRICIA A. MATHES
Chevron U.S.A. Inc.
935 Gravier Street
New Orleans, Louisiana 70112

OLIVER P. STOCKWELL
EMMETT C. SOLE
H. ALAN McCALL
Stockwell, Sievert, Viccellio
Clements & Shaddock
Post Office Box 2900
Lake Charles, Louisiana 70602
(318) 436-9491

Counsel for Appellant,
Chevron U.S.A. Inc.

March 1987

NO. 86-1198

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

LOR, INC.,
NEWPARK PIPE & SUPPLY, INC.,
NEWPARK WASTE TREATMENT SYSTEMS, INC.,
NEWPARK FLUID SERVICES, INC., AND
GUILLORY TANK TRUCK SERVICES, INC.

VERSES

CHEVRON U.S.A. INC.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF LOUISIANA

REPLY OF CHEVRON U.S.A. INC. TO MOTION TO DISMISS FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION FILED BY APPELLEES

OPINIONS BELOW AND RELATED CASE

The Jurisdictional Statement filed by appellant correctly sets forth the opinions rendered by the trial court (Appendix C to the Jurisdictional Statement), The Louisiana First Circuit Court of Appeal (Appendix B to the Jurisdictional Statement; also appears at 489 So.2d 1326), and the denial of appellant's writ application by the Louisiana Supreme Court (Appendix A to the Jurisdictional Statement; also appears to 493 So. 2d 1217).

In their motion, appellees state that "the highest Louisiana Federal Court," in the related case of *JHJ Limited I v. Chevron U.S.A. Inc.*, 806 F.2d 82 (5th Cir. 1986), has now rejected appellant's constitutional arguments. The related case was affirmed, under the Erie Doctrine, *without* considering the federal constitutional questions. However, a writ application to this Court will be timely filed by appellant along with a motion to consolidate the cases.

THE LOUISIANA OIL, GAS AND WATER WELLS LIEN STATUTE APPLIES TO WATER WELLS AND IS AN ACKNOWLEDGEMENT THAT THE LOUISIANA LEGISLATURE NEVER CONSIDERED THE CONFLICT BETWEEN IT AND THE LOUISIANA CONSERVATION ACT

The text of the Louisiana Oil, Gas and Water Wells lien statute, LSA-R.S. 9:4861, et seq., is set forth in appellant's Jurisdictional Statement. The true intention of the Louisiana legislature in the enactment of that statute is evident. Contrary to appellees' claim, the purpose of the statute is not solely the protection of suppliers of equipment, materials, and services in the drilling operations of *only* oil or gas wells. The statute is clearly intended to protect suppliers who contributed equipment, materials, and services in the drilling of a water well.

The water well portion of the statute is critical because it reflects the Louisiana legislature's true intention in enacting the statute, and the scope of the lien which was contemplated. Appellees urge that their liens affect appellant's share of production from oil and gas wells *off* the Wunsch lease. They then argue, inconsistently, that the Louisiana Conservation Act and the principle of unitization do no affect the provisions of the Louisiana Oil, Gas and Water Wells lien statute. In truth, the Louisiana legislature never contemplated the overlap between the statutes.

The inconsistency of appellee's argument is apparent. The Louisiana Oil, Gas and Water Wells lien statute also contemplates protection of suppliers of equipment, materials and services to the drilling of *water* wells. However, the Louisiana Conservation Act, particularly LSA-R.S. 30:9, establishes the principle of unitization to control the location and drilling of *only* wells for oil or gas, as defined by LSA-R.S. 30:3. Forced drilling units are not created for the drilling of *water* wells. Suppliers to a water well on a lease which overlaps separate drilling units for oil and gas established by

the Louisiana Commissioner of Conservation would not have a lien upon the lessee's production of oil and gas or water from wells *off* the lease on which the water well is drilled.

The statute was not intended to favor suppliers to an oil or gas well over suppliers to a water well. There is nothing in the statute that indicates any difference between persons who supply equipment, material or services in the drilling of a water well and of an oil and gas well. The result of appellees' argument is based on the erroneous premise that suppliers of equipment, materials and services in the drilling of an oil and gas well have greater rights under the statute than those who supply water wells. This argument is made by appellees in an effort to impact appellant's share of production from oil and gas wells located *off* the Wunsch lease in three (3) different units. Such an argument or conclusion unconstitutionally deprives appellant of its property and rights.

The rights granted by the Louisiana Oil, Gas and Water Wells lien statute should be no greater for suppliers to oil and gas wells than for suppliers to water wells.

LOUISIANA'S COURTS RECOGNIZED THE EXISTENCE OF THE CONSTITUTIONAL ISSUES ASSERTED BY APPELLANT

The trial court, the 21st Judicial District Court in and for the Parish of Livingston, considered appellant's consititutional arguments and held that, if the liens claimed by appellees were extended to any portion of appellant's Wunsch lease outside the S Unit, the Louisiana Oil, Gas and Water Wells lien statute would be unconstitutional as applied. Appendix C to appellant's Jurisdictional statement at 14a.

In denying the appellant's writ of certiorari and/or review, one member of the Louisiana Supreme Court would have granted the writ. Appendix A to appellant's Jurisdictional Statement; also appears at 493 So.2d 1217.

In denying appellant's Motion to Stay Proceedings in the Trial Court Pending Appeal to the United States Supreme Court, two justices of the Louisiana Supreme Court would have granted the stay. (Appendix A hereto).

Three different justices (out of seven) of the Louisiana Supreme Court apparently considered that this case involves serious constitutional questions, as did the trial court. This further strengthens appellant's argument that this Court should consider this appeal.

CONCLUSION

The Jurisdictional Statement filed by appellant correctly stated the facts as found by the trial court. There is no dispute over these facts, although some incorrect conclusions were drawn from them, as demonstrated in our Jurisdictional Statement.

Appellees offers no new arguments which would preclude this Court from accepting this appeal and fixing it for argument.

In view of the fact that a petition for a writ of certiorari will be filed in *JHJ Limited I v. Chevron U.S.A. Inc., supra,* involving the identical legal issues raised in this appeal, the Court should consider withholding action until the petition for a writ of certiorari is filed and a motion for consolidation is presented.

Respectfully submitted,

OLIVER P. STOCKWELL
EMMETT C. SOLE
H. ALAN McCALL,
Stockwell, Sievert, Viccellio,
Clements & Shaddock
Post Office Box 2900
Lake Charles, Louisiana 70602
(318) 436-9491

COUNSEL FOR APPELLANT,
CHEVRON U.S.A. INC.

CERTIFICATE OF SERVICE
PURSUANT TO RULE 28 OF
THE SUPREME COURT OF THE UNITED STATES

I, Oliver P. Stockwell, one of the counsel of record for Chevron U.S.A. Inc. appellant, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 2nd day of March, 1987, I served three (3) copies of the foregoing reply on each of the several parties thereto, as follows:

BEST

On the Honorable William J. Guste, Jr. Attorney General of the State of Louisiana, Department of Justice, 234 Loyola Avenue, New Orleans, Louisiana 70112.
On LOR, Inc. Newpark Pipe & Supply, Inc., Newpark Waste Treatment Systems, Inc., Newpark Fluid Services, Inc. Guillory Tank Truck Servies, Inc., F.F.K. Gas & Oil Properties, et al, and Martin Exploration Co., in properly addressed envelopes with first class postage prepaid to each of their respective counsel of record, as follows:

Mr. Edward D. Wegmann
Jones, Walker, Waechter, Poitevent
Carrere & Denegre
Attorneys for LOR, Inc., et. al.
Place St. Charles
201 St. Charles Avenue
New Orleans, Louisiana 70170

Mr. John Dale Powers
Attorney for F.F.K. Gas & Oil Properties, et al
Post Office Box 15948
4156 S. Sherwood Forest Boulevard
Baton Rouge, Louisiana 70895

Ms. Jan Marie Hayden
Brodtmann, Heller, Feldman, Steinberg
& Berins
Attorney for Martin Exploration Co.
624 Whitney Bank Building
New Orleans, Louisiana 70130

It is further certified that all parties required to be served have been served, and that the list of the counsel for such parties is as set forth above.

OLIVER P. STOCKWELL
Stockwell, Sievert, Vicellio,
Clements & Shaddock
Post Office Box 2900
Lake Charles, Louisiana 70602

AVAILABLE COPY

APPENDIX A

CHIEF JUSTICE
JOHN A. DIXON, JR.
ASSOCIATE JUSTICES
PASCAL F. CALOGERO, JR.
WALTER F. MARCUS, JR.
JAMES L. DENNIS
JACK CROZIER WATSON
HARRY T. LEMMON
LUTHER F. COLE
CLERK OF COURT
FRANS J. LABRANCHE, JR.

Supreme Court
STATE OF LOUISIANA
New Orleans

December 11, 1986

301 LOYOLA AVE., 70112
TELEPHONE 504-568-5707

Oliver P. Stockwell, Esq.
STOCKWELL, SIEVERT, VICCELLIO,
CLEMENTS & SHADDOCK
P.O. Box 2900
Lake Charles, La. 70602

In Re: Lor, Inc. vs. Martin Exploration Co. et al
No. 86-C-1259

Dear Mr. Stockwell:

This is to advise that the Court took the following action on your Motion to Stay Proceedings in the Trial Court Pending Appeal to the United States Supreme Court in the above entitled matter,

"Denied. No apparent Federal Question
WATSON & COLE J.J. would grant the stay."

With kindest regards, I remain,

Very truly yours,

Frans J. Labranche, Jr.
Clerk of Court

FJLJr/rd
ccs: Emmett C. Sole, Esq.
Edward D.Wegmann, Esq.
R. Patrick Vance, Esq.
Edward B. Poitevent, Esq.